

THE 18TH AMENDMENT

A REPLY TO
NICHOLAS MURRAY BUTLER


BY
WILLARD BROWN THORP

Minister of the Congregational Church

PALO ALTO, CALIF.

1928

THE AMERICAN ISSUE PUBLISHING COMPANY
WESTERVILLE, OHIO



Digitized by the Internet Archive
in 2017 with funding from
Columbia University Libraries

THERE has come into my hands a copy of the Congressional Record in which is printed an address delivered by Dr. Nicholas Murray Butler at St. Louis December 14, 1927. Presumably it gives as strong an argument as he is able to make on the subject of the Eighteenth Amendment.

He begins with an argument that was advanced by Mr. Elihu Root in his plea before the Supreme Court, to the effect that the Amendment goes beyond the proper powers of Congress and the state legislatures to change the Constitution, and that if those powers were construed as unlimited, an amendment might even be passed which would change this republic over into an hereditary monarchy. Dr. Butler quotes Mr. Root as even making the extraordinary statement that if the Court upheld the Eighteenth Amendment "the government of the United States as we have known it will have ceased to exist!" The Court evidently was not alarmed, for it sustained the Amendment unanimously, and made no comment on this argument—either as Dr. Butler thinks because they were unable to answer it, or as would seem more likely because they did not deem it worthy of attention. But there was one person present who was completely convinced, and from that day to this Dr. Butler has not ceased to lift up his voice in protest. His sincerity cannot be doubted and his personal motives are above question. He believes that this Amendment has been a fundamental blow to our liberties as a people and raises "the most far-reaching question with which we have had to deal since the discussions over slavery and the right of

secession." (This comparison, by the way is not an altogether fortunate one for his argument—for that question, it will be remembered, was decided *against* the liberty of the individual to hold slaves and *against* the liberty of a state to secede from the Union).

Dr. Butler then proceeds to urge that the practical effect of the Amendment has been disastrous. According to him things were going on splendidly in the matter of temperance reform: "the saloon rapidly disappearing in many parts of the country, and under greatly increased control in other parts, and a general sense of responsibility for temperance increasing by leaps and bounds, when there came this literally stupendous blow which . . . has put back the cause of temperance in this country for at least one long, long generation." Dr. Butler does not take pains to state that all this splendid progress which he rejoices in was achieved in large measure by the enactment and enforcement of prohibition laws, which in every instance were resisted by the same arguments he is now using against national prohibition.

Next I notice that Dr. Butler is particularly incensed by what he calls the "dishonesty" of the Amendment. Just in what sense does he mean that it is dishonest? The point seems to be that "its real purpose is to enforce compulsory total abstinence," and yet all it specifies is the manufacture, transportation and sale of liquor. He goes on to say: "Had they uncovered their real purpose in the beginning, none would be so blind as not to see that it was a most shocking and tyrannical invasion of the private life of every family in the United States." We must make some allowance, I suppose, for the slowness of the academic mind; but

apparently Dr. Butler was about the last man in the country to grasp the simple truth that the purpose of the Amendment was to keep people from drinking by keeping them from getting liquor. It was certainly highly dishonest in those who drafted the Amendment not to have made its meaning plain.

As I read on, I find him saying that he himself would prohibit liquor in "public drinking places." Here again he is lagging along behind the times, for the American people had tried that in various ways and had found by experience that it did not get at the root of the trouble. But it is interesting to note that Dr. Butler himself would go as far as that. At this point, trying sincerely to understand his point of view, I think I see one of the difficulties he is laboring under. He sees that this is a social evil, but apparently he thinks it is a social evil only when it is done in a public drinking place. Now the American people knew better than that. They knew that the private drinking of whisky, rum and gin is a social evil, because its effects are not confined to the individual. They had seen its effects on families, and on public safety in this age of motor vehicles.

Then Dr. Butler goes on and talks about gluttony as an analogous evil, and wonders why we do not prohibit the use of food because that in excess is a vice. Here again we see the weakness of a type of mind that moves only in the grooves of logic and does not thoroughly grasp the working of cause and effect. The effect of gluttony is not to make a person an inebriate or a madman. Gluttony is a vice indeed, but its social consequences are negligible; whereas the social consequences of liquor drinking have proved

so serious that a corporation operating a railroad or a factory will not hesitate for a moment to invade the private lives of its employes and tell them they can choose between letting liquor alone and losing their jobs. Those are the conditions that have led the American people to resolve to go to the bottom of this thing and clean it up. It may not have been an altogether appropriate subject for a constitutional amendment, but they put it into the Constitution itself because they were so tremendously in earnest about it that they would stop at no half-way measures. It is a way democracies have when they mean business.

There is another mistaken notion that runs through the utterances of Dr. Butler and a good many others who are fond of discussing this subject. They seem to have the idea that the purpose of this legislation is to make people temperate by enactment. Not at all. It has nothing whatever to do with the practice of temperance or moderation as a personal virtue. It is not concerned with that. The purpose is to make strong drink so difficult to get that the social evil of it will be abated. That was a perfectly reasonable undertaking, and to a considerable extent it has been accomplished.

There have been difficulties in the way as might have been foreseen by anybody. For one thing, neither President Harding nor President Coolidge ever put the full strength of the executive arm of the federal government into the enforcement of this law. Perhaps it was not wise to do so. Perhaps it was inevitable that in making a change so great as this the machinery should not be thrown into high gear at the very beginning. Certainly the elements that Dr. Butler is associated with have done their ut-

most to retard it and to give aid and comfort to those who were resisting it.

The really serious difficulty, however, has not arisen from the laxity of government officials in enforcing the law. I join with Dr. Butler in applauding certain remarks of President Coolidge as to the limited power of legal enactments to secure changes in the life of the people, ending with the epigram, "Real reform does not begin with a law, it ends with a law." The really serious difficulty has rather been in the attitude of some of those very elements in the population which Dr. Butler himself represents,—those who sitting at ease on the upper levels of life, where jobs are not jeopardized by liquor on the breath, have snapped their fingers at this particular one of their country's laws, and done as they pleased and encouraged others of their class to do likewise. No liquor for the chauffeur who drives our car, because our safety is in his keeping; but plenty of liquor for us who loll on the cushions in the tonneau. No liquor for the Negro, but plenty for the white gentlemen of the South in their clubs. It is these wealthy patrons and their gilded youth that have called the bootlegger into existence and made him rich.

And in the light of what has just been said, it should be added that the unparalleled prosperity of our country in these last few years—a prosperity to which Prohibition itself has in a measure contributed—has greatly aggravated these conditions. Luxury does not comport easily with total abstinence. It is not at all strange that there has been a certain loss of ground, a certain rallying of the elements that demand liquor. One might think from the tone of the magazines and the newspapers that

there was a veritable tidal wave of opposition. But the delegates that composed the Republican National Convention at Kansas City knew the temper of the communities they represent and the temper of the country at large, and when Dr. Butler rose and with characteristic courage and persistence made his little speech and submitted his motion, that motion was laid on the table by a majority so great that nobody asked to have it counted.

And now let us return to that larger question of personal liberty and how it is being affected by the new life of the modern world. There is more in that question, I believe, than Dr. Butler has shown us. In the course of the address which I have been reviewing he quoted a remark by a United States senator to the effect that "there is no such thing as personal liberty in a republic." Whereupon Dr. Butler held up his hands in astonishment and invoked the shades of Samuel Adams and Patrick Henry. But there was a goodly measure of truth back of that senator's words. As a matter of fact Dr. Butler and Clarence Darrow and H. L. Mencken and other extreme individualists are still thinking in terms of an age when men lived somewhat more slowly and farther apart than they do now, an age when every man's house was his castle and every man's business was his private domain. We may on some accounts regret the passing of that age, but it is surely passing. It is giving place to an age when men live closely packed together and are moving along the crowded ways of life with great rapidity. In the nature of the case their liberties have to be circumscribed.

The particular problem we have been discussing is only one instance among many

where men find themselves estopped from doing things they had always felt they had a perfect right to do. Downtown in the city I may not even walk across the street except at certain places and certain times. In my own town I may not even burn up rubbish in my yard without getting a permit from the fire chief. Some are greatly disturbed because radicals are not permitted to make revolutionary speeches in public places or circulate them through the mails; but as for that I may not even distribute business circulars from house to house without a special permit. I may not solicit alms without a license. I may not have an electric light in my house unless the wire is put in just so. I may not even build a little addition to my garage without submitting it to the city inspector and getting his approval. These things are very annoying, and they remind us of a long list of traffic rules and other invasions of our personal liberty. Shades of Samuel Adams and Patrick Henry! shall we tamely submit to see our private liberties thus whittled away?

Restrictions like these are of course the price we pay for living in highly developed modern communities. And there are going to be many more of them as population increases and as the speed of life is accelerated. Prohibition may be said to be the price we pay for the universal use of the automobile; and America, which has 80 per cent of all the automobiles on the face of the earth, is quite naturally the first nation to have to pay that price. America is leading the world in highly developed industrial and social efficiency, and accordingly she will have to lead the world in the regulation of private life in the interest of public safety. That is the reason liquor has been prohib-

ited, not because some nice old ladies do not like it. Dr. Butler has an idea that the Canadians or the Norwegians or some other slow-going peoples might point the way for us to manage a thing like this. But it is not in those directions that we have been accustomed to look for light and leading. America is meeting new conditions, and therefore she is pioneering in these matters. She is not going to be satisfied with the conditions that prevail elsewhere. She will lead, and where she leads other progressive peoples will have to follow.

The other day I ran across some words recently spoken by one of the great Englishmen of our day, Professor Gilbert Murray of Oxford. He imagines a visitor from Mars surveying conditions in Great Britain and expressing astonishment that the drink evil is tolerated, in view of the miserable social conditions for which it is largely responsible. And then Professor Murray casts his eye over into this country and sees "a great movement, backed by an enormous majority of the people, for the outlawry of drink. . . . We cannot yet say that it is a complete success. It still hangs in the balance, it is still a battle rather than a victory. But I think we can say that it is a noble, chivalrous and momentous adventure for any people to have undertaken." He reminds us that it was begun in the great wave of idealism and consecration that came immediately after the war. "That great wave of insight passed away, . . . and in their ordinary workaday temper many people cannot live up to the resolve they took when at their best."

That is a very different view from Dr. Butler's, and I have no difficulty in deciding which I prefer to enroll under. Professor

Murray is looking on from the side lines, and he sees the kind of struggle we are in the midst of and that the interests of the higher life of the world are involved.

Let us look for a moment from the side lines at another nation which has a somewhat similar problem on its hands. I refer to China. What do you think of those elements in China today that are trying to nullify the suppression of the opium traffic and render it ineffective? That is a situation quite comparable to our own, and Dr. Butler's arguments would be just as valid there as they are here. Opium is indeed a more deadly drug; but on the other hand ours is a far more highly organized industrial civilization than that of China. The struggle with us has advanced from narcotics to alcoholics, but the principle is precisely the same.

The churches are in this battle of necessity, because after all has been said they represent the reserves of idealism. If the Christian people let go of this thing, putting their hand to the plow and then looking back, you cannot expect anybody else to take it up and carry it through. You and I and others like us must be the ones who, when faint hearts fail and lukewarm people waver and folk of short memories forget, stand firm and hold the line of the great advance. The hour when the enemy is making a tremendous drive, with barrages and gas attacks and all manner of alarums, is the hour when the Church of Christ must stand like a rock, her watchword the slogan of Verdun, "They shall not pass!"



